



Federal Communications Commission  
Washington, D.C. 20554

JAN 29 1998

DOCKET FILE COPY ORIGINAL

97-182

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JAN 29 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

The Honorable Richard Arney  
United States House of Representatives  
9901 Valley Ranch Parkway, East  
Suite 3050  
Irving, TX 75063

Dear Congressman Arney:

Thank you for your letter dated December 1, 1997, on behalf of your constituents, Mayors Richard N. Beckert of Addison, Texas, Candy Sheehan of Coppell, Texas, Milburn R. Gravley of Carrollton, Texas, and Euline Brock of Denton, Texas, concerning the placement and construction of facilities for the provision of personal wireless services and radio and television broadcast services in their respective communities. Your constituents' letters refer to issues being considered in three proceedings that are pending before the Commission. In **MM Docket No. 97-182**, the Commission has sought comments on a Petition for Further Notice of Proposed Rule Making filed by the National Association for Broadcasters and the Association for Maximum Service Television. In this proceeding, the petitioners ask the Commission to adopt a rule limiting the exercise of State and local zoning authority with respect to broadcast transmission facilities in order to facilitate the rapid build-out of digital television facilities, as required by the Commission's rules to fulfill Congress' mandate. In **WT Docket No. 97-192**, the Commission has sought comment on proposed procedures for reviewing requests for relief from State and local regulations that are alleged to impermissibly regulate the siting of personal wireless service facilities based on the environmental effects of radio frequency emissions, and related matters. Finally, in DA 96-2140 and FCC 97-264, the Commission twice sought comments on a Petition for Declaratory Ruling filed by the Cellular Telecommunications Industry Association seeking relief from certain State and local moratoria that have been imposed on the siting of commercial mobile radio service facilities.

Because all of these proceedings are still pending, we cannot comment on the merits of the issues at this time. However, I can assure you that the Commission is committed to providing a full opportunity for all interested parties to participate. The Commission has formally sought public comment in all three proceedings and, as a result, has received numerous comments from State and local governments, service providers, and the public at large. Your letter and your constituents' letters, as well as this response, will be placed in the record of all three proceedings and will be given full consideration.

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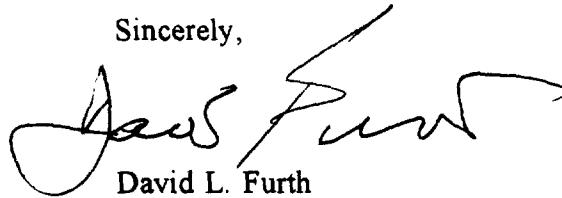
The Honorable Richard Arney

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Further information regarding the Commission's policies toward personal wireless service facilities siting, including many of the comments in the two proceedings involving personal wireless service facilities, is available on the Commission's internet site at <http://www.fcc.gov/wtb/siting>.

Thank you for your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read "David L. Furth". The signature is fluid and cursive, with a large initial "D" and a long, sweeping horizontal stroke at the end.

David L. Furth  
Chief, Commercial Wireless Division  
Wireless Telecommunications Bureau

CONGRESSMAN DICK ARMEY  
26TH DISTRICT, TEXAS

MAJORITY LEADER



WASHINGTON OFFICE  
201 CANNON HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-4326  
(202) 225-7772

DISTRICT OFFICE:  
9901 VALLEY RANCH PKWY, EAST  
SUITE 2050  
IRVING, TX 75063  
(972) 556-2500

**Congress of the United States**  
**House of Representatives**

December 1, 1997

W 16  
97-182  
7776

Mr. Dan Pythyon  
Federal Communications Commission  
1919 M. Street, NW, Room 808  
Washington, D.C. 20554

Dear Mr. Pythyon.

I have received the enclosed correspondence dated November 24, from Jerry Montgomery of the FCC Compliance and Information Bureau in Dallas.

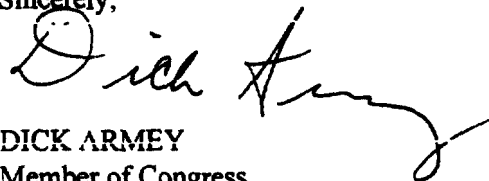
Mr. Montgomery states that my inquiry on behalf of the cities of Carrollton and Denton is being forwarded to Washington, D. C. I want to add to this inquiry the concerns expressed also by the City of Coppell and the Town of Addison, which I have enclosed.

These cities all have written to me regarding the FCC's actions on local zoning of cellular, radio and TV towers. As I stated in my letter of November 21, to the FCC in Dallas, I would be happy to host a meeting in my district office with staff and city officials to facilitate discussion of this issue. If you feel that this would be more productive, please contact Maria Nirschl in my district office at (972) 556-2500.

In addition, if you have any questions, or if I may provide any additional information to you, please contact Maria. Any written response should be directed to the district office.

Thank you for your assistance in this matter.

Sincerely,

  
DICK ARMEY  
Member of Congress

DA/mn  
Enclosures

**RECEIVED NOV 25 1997**

**FEDERAL COMMUNICATIONS COMMISSION  
COMPLIANCE & INFORMATION BUREAU**

November 24, 1997

**Reply To:**

9330 LBJ Freeway, Suite 1170

Dallas, Texas 75243

Case Number CD-98-02

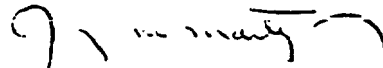
Honorable Dick Armey  
Congress of the United States  
House of Representatives  
9901 Valley Ranch Pkwy, East  
Suite 3050  
Irving, TX 75063

Dear Congressman Armey:

Thank you for contacting our office on behalf of your constituents, Mayor Milburn Gravely and Carrollton, Texas and Mayor ProTem Euline Brock, of Denton, Texas.

Your inquiry has been forwarded to the Chief of the Compliance and Information Bureau for coordination with the appropriate staff at our headquarters office in Washington, D.C. You may wish to contact that office for further assistance at (202) 418-1910 or write to Federal Communications Commission, Office of Legislative and Intergovernmental Affairs, 1919 M Street, NW, Washington, DC 20554.

Sincerely,

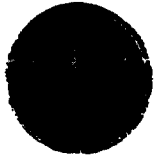


Jerry M. Montgomery  
Acting District Director

ew

RICHARD N. BECKERT  
MAYOR

RECEIVED DEC 01 1997



NOV 16 1997

TOWN OF ADDISON, TEXAS

Post Office Box 144, Addison, Texas 75001-0144 (214) 450-7026 Fax (214) 960-7684

November 10, 1997

Representative Dick Armey  
House of Representatives  
301 Cannon H.O.B.  
Washington, D.C. 20515

Dear Representative Armey:

We are writing you about the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell it to stop these efforts which violate the intent of Congress, the Constitution and principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rulemakings where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local authority in three different rulemakings.

**Cellular Towers - Radiation:** Congress expressly preserved local authority over cellular towers in the 1996 Telecommunication Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U.S. which it finds is "tainted" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying that it can "second guess" what the true reasons for a municipality's decisions are, need to be bound by the stated reasons given by a municipality and doesn't even need to wait until a local planning decision is final before the FCC acts.

Some of our citizens are concerned about the radiation from cellular towers. We cannot prevent them from mentioning their concerns in a public hearing. In its rulemaking the FCC is saying that if any citizen raises this issue that this is sufficient basis for a cellular zoning decision to immediately be taken over by the FCC and potentially reversed, even if the municipality expressly says it is not considering such statements and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

**Cellular Towers - Moratoria:** Repeatedly the FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate that increase in the numbers of these towers. Again, this violates the Constitution and the directive from Congress preventing the FCC from becoming a Federal

## **Zoning Commission.**

**Radio/TV Towers** - The FCC's proposed rule on radio and TV towers sets an artificial limit of 21 days to 45 days for municipalities to act on any local permit (environmental, building permit, zoning or other). Any permit request is automatically deemed granted if the municipality doesn't act in this time frame, even if the application is incomplete or clearly violates the law. And the FCC's proposed rule would prevent municipalities from considering the impacts such towers have on property values, the environment or aesthetics. Even safety requirements could be overridden by the FCC! And all appeals of zoning and permit denials would go to the FCC, not to local courts.


This proposal is astounding when broadcast towers are some of the tallest structures known to man - over 2,000 feet tall, taller than the Empire State Building. The FCC claims these changes are needed to allow TV stations to switch to High Definition Television quickly. But The Wall Street Journal and trade magazines state there is no way the FCC and broadcasters will meet the current schedule just to meet an artificial deadline.

These actions represent a power grab by the FCC to become the Federal Zoning Commission for cellular towers and broadcast towers. They violate the intent of Congress, the Constitution and principles of Federalism. This is particularly true given that the FCC is a single purpose agency, with no zoning expertise, that never saw a tower it didn't like.

Please do three things to stop the FCC: First, write new FCC Chairman William Kennard and FCC Commissioners Susan Ness, Harold Furchtgott-Roth, Michael Powell and Gloria Tristani telling them to stop this intrusion on local zoning authority in cases WT 97-197, MM Docket 97-182 and DA 96-2140; second, join in the "Dear Colleague Letter" currently being prepared to go to the FCC from many members of Congress; and third, oppose any effort by Congress to grant the FCC the power to act as a "Federal Zoning Commission" and preempt local zoning authority.

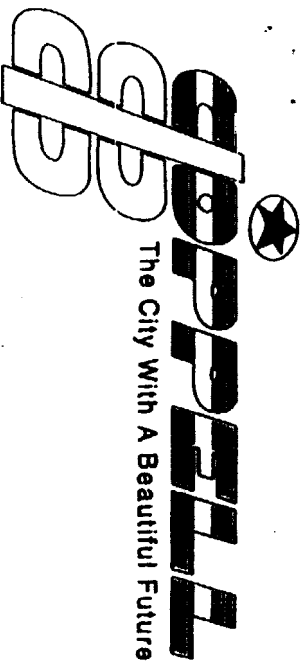
The following people at national municipal organizations are familiar with the FCC's proposed rules and municipalities' objections to them: Barrie Tabin at the National League of Cities, 202-626-3194; Eileen Huggard at the National Association of Telecommunications Officers and Advisors, 703-506-3275; Robert Fogel at the National Association of Counties, 202-393-6226; Kevin McCarty at the U.S. Conference of Mayors, 202-293-7330; and Cheryl Maynard at the American Planning Association, 202-872-0611. Feel free to call them if you have questions.

Sincerely,



Richard N. Beckert  
Mayor

RNB:ae



P.O. Box 478  
Coppell, Texas 75019  
214-462-0022

October 27, 1997

The Honorable Dick Army  
Member, United States House of Representatives  
9901 East Valley Ranch Parkway, Suite 3050  
Irving, Texas 75063

Dear Representative Army:

We are writing you about the Federal Communications Commission and its attempts to preempt local zoning of cellular, radio and TV towers by making the FCC the "Federal Zoning Commission" for all cellular telephone and broadcast towers. Both Congress and the courts have long recognized that zoning is a peculiarly local function. Please immediately contact the FCC and tell it to stop these efforts which violate the intent of Congress, the Constitution and principles of Federalism.

In the 1996 Telecommunications Act, Congress expressly reaffirmed local zoning authority over cellular towers. It told the FCC to stop all rulemaking where the FCC was attempting to become a Federal Zoning Commission for such towers. Despite this instruction from Congress, the FCC is now attempting to preempt local zoning authority in three different rulemakings.

**Cellular Towers - Radiation:** Congress expressly preserved local zoning authority over cellular towers in the 1996 Telecommunications Act with the sole exception that municipalities cannot regulate the radiation from cellular antennas if it is within limits set by the FCC. The FCC is attempting to have the "exception swallow the rule" by using the limited authority Congress gave it over cellular tower radiation to review and reverse any cellular zoning decision in the U. S. which it finds is "inhibited" by radiation concerns, even if the decision is otherwise perfectly permissible. In fact, the FCC is saying that it can "second guess" what the true reasons for a municipality's decision are, need not be bound by the stated reasons given by a municipality and doesn't even need to wait until a local planning decision is final before the FCC acts.

Some of our citizens are concerned about the radiation from cellular towers. We cannot prevent them from mentioning their concerns in a public hearing. In its rulemaking the FCC is saying that if any citizen raises this issue that this is sufficient basis for a cellular zoning decision to immediately be taken over by the FCC and potentially reversed, even if the municipality expressly says it is not considering such statements and the decision is completely valid on other grounds, such as the impact of the tower on property values or aesthetics.

**Cellular Towers - Moratoria:** Relatedly the FCC is proposing a rule banning the moratoria that some municipalities impose on cellular towers while they revise their zoning ordinances to accommodate the increase in the numbers of these towers. Again, this violates the Constitution and the directive from Congress preventing the FCC from becoming a Federal Zoning Commission.

**Radio/TV Towers:** The FCC's proposed rule on radio and TV towers is as bad: It sets an artificial limit of 21 to 45 days for municipalities to act on any local permit (environmental, building permit, zoning or other). Any permit request is automatically deemed granted if the municipality doesn't act in this time frame, even if the application is incomplete or clearly violates local law. And the FCC's proposed rule would prevent municipalities from

The Honorable Dick Army  
October 27, 1997  
Page Two

considering the impacts such towers have on property values, the environment or aesthetics. Even safety requirements could be overridden by the FCC! And all appeals of zoning and permit denials would go to the FCC, not to the local courts.

This proposal is astounding when broadcast towers are some of the tallest structures known to man -- over 2,000 feet tall, taller than the Empire State Building. The FCC claims these changes are needed to allow TV stations to switch to High Definition Television quickly. But *The Wall Street Journal* and trade magazines state there is no way the FCC and broadcasters will meet the current schedule anyway, so there is no need to violate the rights of municipalities and their residents just to meet an artificial deadline.

These actions represent a power grab by the FCC to become the Federal Zoning Commission for cellular towers and broadcast towers. They violate the intent of Congress, the Constitution and principles of Federalism. This is particularly true given that the FCC is a single purpose agency, with no zoning expertise, that never saw a tower it didn't like.

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Respectfully,



Candy Sheehan  
Mayor

CS:kb



CONGRESSMAN DICK ARMEY  
26TH DISTRICT, TEXAS

MAJORITY LEADER



# Congress of the United States

House of Representatives

Washington, DC 20515-4326

November 21, 1997

WASHINGTON OFFICE:  
301 CANNON HOUSE OFFICE BUILDING  
WASHINGTON, DC 20515-4326  
(202) 225-7772

DISTRICT OFFICE:  
9801 VALLEY RANCH PKWY. EAST  
SUITE 3060  
IRVING, TX 75063  
(972) 556-2500

**RECEIVED**

NOV 24 1997

F.C.C. Dallas...

Federal Communications Commission  
Engineer In Charge  
Federal Communications Commission  
9330 LBJ Freeway, Suite #1170  
Dallas, Texas 75243

Re: Mayor Milburn Gravely  
City of Carrollton  
P. O. Box 110535  
Carrollton, Texas 75011-0535

Mayor ProTem Euline Brock  
City of Denton  
215 E. McKinney  
Denton, Texas 76201

Dear Sir or Madam,

The enclosed communication is submitted for your every review and consideration, consistent with applicable laws and regulations. The most relevant points have been highlighted for your convenience.

As you can see, the Cities of Carrollton and Denton have concerns regarding the FCC's actions involving local zoning of cellular, radio, and TV towers. I would be happy to host a meeting in my district office with staff and city officials to facilitate discussion of this issue. If you feel that this would be more productive, please contact Maria Nirschl in my district office at (972) 556-2500.

In addition, if you have any questions, or if I may provide any additional information to you, please contact Maria. Any written response should be directed to the district office.

Thank you for your assistance in this matter.

Sincerely,

DICK ARMEY  
Member of Congress

DA/mn  
Enclosures



CARROLLTON

October 27, 1997

The Honorable Dick Arney  
301 Cannon H.O.B.  
Washington, DC 20515

Milburn R. Gravley  
Mayor

Dear Representative Arney:

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Very truly yours,



Milburn R. Gravley  
Mayor

cc: Frank Sturzl